

superior commissioned officer (in command) (in rank), who was then in the execution of (his) (her) office, by _____.

16. Article 90 (10 U.S.C. 890)—Willfully disobeying superior commissioned officer

a. *Text of statute.*

Any person subject to this chapter who willfully disobeys a lawful command of that person's superior commissioned officer shall be punished—

(1) if the offense is committed in time of war, by death or such other punishment as a court-martial may direct; and

(2) if the offense is committed at any other time, by such punishment, other than death, as a court-martial may direct.

b. *Elements.*

(1) That the accused received a lawful command from a superior commissioned officer;

(2) That this officer was the superior commissioned officer of the accused;

(3) That the accused then knew that this officer was the accused's superior commissioned officer; and

(4) That the accused willfully disobeyed the lawful command.

[Note: if the offense was committed in time of war, add the following element]

(5) That the offense was committed in time of war.

c. *Explanation.*

(1) *Superior commissioned officer.* The definition in subparagraph 15.c.(1) applies here.

(2) *Disobeying superior commissioned officer.*

(a) *Lawfulness of the order.*

(i) *Inference of lawfulness.* An order requiring the performance of a military duty or act may be inferred to be lawful, and it is disobeyed at the peril of the subordinate. This inference does not apply to a patently illegal order, such as one that directs the commission of a crime.

(ii) *Determination of lawfulness.* The lawfulness of an order is a question of law to be determined by the military judge.

(iii) *Authority of issuing officer.* The commissioned officer issuing the order must have authority to give such an order. Authorization may be based on law, regulation, custom of the Service, or

applicable order to direct, coordinate, or control the duties, activities, health, welfare, morale, or discipline of the accused.

(iv) *Relationship to military duty.* The order must relate to military duty, which includes all activities reasonably necessary to accomplish a military mission, or safeguard or promote the morale, discipline, and usefulness of members of a command and directly connected with the maintenance of good order in the Service. The order may not, without such a valid military purpose, interfere with private rights or personal affairs. However, the dictates of a person's conscience, religion, or personal philosophy cannot justify or excuse the disobedience of an otherwise lawful order. Disobedience of an order which has for its sole object the attainment of some private end, or which is given for the sole purpose of increasing the penalty for an offense which it is expected the accused may commit, is not punishable under this article.

(v) *Relationship to statutory or constitutional rights.* The order must not conflict with the statutory or constitutional rights of the person receiving the order.

(b) *Personal nature of the order.* The order must be directed specifically to the subordinate. Violations of regulations, standing orders or directives, or failure to perform previously established duties are not punishable under this article, but may violate Article 92.

(c) *Form and transmission of the order.* As long as the order is understandable, the form of the order is immaterial, as is the method by which it is transmitted to the accused.

(d) *Specificity of the order.* The order must be a specific mandate to do or not to do a specific act. An exhortation to "obey the law" or to perform one's military duty does not constitute an order under this article.

(e) *Knowledge.* The accused must have actual knowledge of the order and of the fact that the person issuing the order was the accused's superior commissioned officer. Actual knowledge may be proved by circumstantial evidence.

(f) *Nature of the disobedience.* "Willful disobedience" is an intentional defiance of authority. Failure to comply with an order through heedlessness, remissness, or forgetfulness is not a violation of this article but may violate Article 92.

(g) *Time for compliance.* When an order requires immediate compliance, an accused's declared intent